

INTERGOVERNMENTAL AGREEMENT

BETWEEN

NO 24126
Filed with the Secretary of State
Date Filed: 07/27/00
Peteey Bayless
Secretary of State

THE STATE OF ARIZONA

AND

By Dicky J. Haenewald THE NAVAJO NATION

THIS AGREEMENT is entered into 27 July
2000, pursuant to Arizona Revised Statutes Section 11-952 through 11-954 as
amended, between the STATE OF ARIZONA, acting by and through its
DEPARTMENT OF TRANSPORTATION (the "State") and the NAVAJO NATION,
acting by and through its TRIBAL COUNCIL (the "Nation").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Nation is empowered by Tribal Council Resolution to enter into this agreement and has resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Nation.

3. The Nation has requested Economic Strength Project (ESP) funds in the amount of \$101,230.00; the Arizona Department of Commerce and the Economic Development Commission have recommended the approval of such funds for the Nation, and the Transportation Board has approved the funding, for the construction of improvements to the Quick Mart access road to provide improved access, and aid in the retention and development of local business, hereinafter referred to as the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE

1 The Nation will:

a. Insure the additional commitment of 44.04% of the total estimated Project cost, or \$79,659.00, whichever is more, from the Nation or other sources (not including ESP funds) to the Project. Accomplish construction of the Project by public bidding, in strict compliance with procurement laws, rules and regulations. Upon completion, approve and accept the Project on behalf of the Nation and provide maintenance to the improvements outside the State right-of-way.

b. No more often than monthly, invoice the State for ESP funds (Arizona Department of Commerce, ATTN: Sandra Brown, ESP Program Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85012), in an amount not to exceed \$101,230.00.

c. Provide the State a copy of the executed Project contract(s), and draw down and expend the State ESP funds no later than six (6) months after the effective date of this agreement. Provide the State detailed written reports of all ESP fund expenditures, supported by invoices, receipts or other suitable and appropriate documentation, and a final accounting report no later than thirty (30) days after ESP funds are fully expended.

d. Reimburse the State any funds received from the State under this agreement which are not specifically and directly expended in compliance with the ESP grant application, which is attached hereto and made a part hereof, and are subsequently disallowed by the State.

e. Provide the State (Arizona Department of Commerce, ATTN: Sandra Brown, ESP Program Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85012) with quarterly Project status reports, and one year after completion of the Project, a written Economic Impact Report detailing the direct and indirect impact of the Project, to include jobs created, jobs retained and related data.

2 The State will:

Within thirty (30) days after receipt and approval of the ESP contract(s) and subsequent monthly progress payment invoices, reimburse the Nation for work completed on the Project funds in an amount not to exceed \$101,230.00.

III. MISCELLANEOUS PROVISIONS

1 The only interest of the Department of Transportation in the Project is to convey economic strength pass through funds for the use and benefit of the Nation by reason of state law under which funds for the Project are authorized to be expended.

2 The Nation agrees to indemnify and save harmless the State, or any of its departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the State of any of the provisions of this agreement. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys fees.

3. The total amount of ESP funds expended under this agreement shall not exceed 55.96% of the total Project cost. Should the Project not be completed, be partially completed, or be completed at a lower cost than the advanced amount, or for any other reason should any of these ESP funds not be expended, a proportionate amount of the funds provided under this agreement shall be reimbursed to the State.
4. This agreement shall remain in force and effect until completion of said Project, reimbursement and subsequent reports; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party. Further, this agreement may be terminated and the ESP grant canceled by the State if the Nation, in the opinion of and by action of the Transportation Board, fails to pursue due diligence on the Project or in the performance of any of the terms of this agreement.
5. This agreement shall become effective upon filing with the Secretary of State.
6. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.
7. Consistent with the provisions of Arizona Revised Statutes Section 35-214 the Navajo Nation agrees to make books and records relating to the contract available for inspection and audit by the State for five years after completion of the contract, upon reasonable written notice.
8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to select a process acceptable to the State and the Nation to resolve such disputes. Such process may include a provision for arbitration.
9. All notices or demands upon any party relating to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

The Navajo Nation
Chinle Regional Business Development Office
PO Box 565
Chinle, Arizona 86503

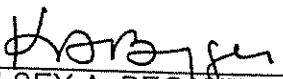
The Navajo Nation
Attorney General
Box 2010
Window Rock, AZ 86515
10. Attached hereto is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

11. Nothing herein shall be construed as a waiver of the sovereign immunity of the Navajo Nation.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

THE NAVAJO NATION

STATE OF ARIZONA
Department of Transportation

By 
KELSEY A. BEGAYE, President

By 
MARY LYNN TISCHER, Director
Transportation Planning

RESOLUTION OF THE
ECONOMIC DEVELOPMENT COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving Acceptance Of An Economic Strength Project Grant From the
Arizona Department Of Transportation For Road Improvements In
Chinle, Navajo Nation (Arizona)

WHEREAS:

1. Pursuant to 2 N.N.C. §721, the Economic Development Committee is established and continued as a standing committee of the Navajo Nation Council; and

2. Pursuant to 2 N.N.C. §724(G) and 2 N.N.C. §724(H), the Economic Development Committee is to oversee all matters related to the activities of the Division of Economic Development and to provide oversight for all activities related to economic development within the Navajo Nation; and

3. On or near November 22, 1999, the Arizona Department of Transportation, in conjunction with the Arizona Department of Commerce, and based upon an application which had been processed by the Chinle Regional Business Development Office, provided award documents for an Economic Strength Project Grant in the amount of \$101,230.00 for widening Highway 191 and providing highway turnouts at the junction of Highway 191 and Navajo Route 7 in Chinle, Navajo Nation (Arizona), to provide better access to the business site of Ernest C. Becenti, Jr.; and

4. The Economic Strength Project Grant requires matching funds in the amount of \$79,659.00, with these matching funds to be provided by Ernest C. Becenti, Jr. who will benefit from the road improvements at his business site in Chinle, Navajo Nation (Arizona); and

5. The entire road improvement project in the amount of \$180,869.00 will be performed at no cost to the Navajo Nation; and

6. The contracting and subcontracting, and all management activities related to this project will be carried out by Ernest C. Becenti, Jr.; and

7. The Economic Development Committee of the Navajo Nation Council finds that acceptance of this Economic Strength Project Grant and the matching funds is in the best interest of the Navajo Nation.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Economic Development Committee of the Navajo Nation Council finds that acceptance of the Economic Strength Project Grant and the matching funds provided by Ernest C. Becenti, Jr. is in the best interest of the Navajo Nation.

EXHIBIT A

2. The Economic Development Committee of the Navajo Nation Council approves the acceptance of the Economic Strength Project Grant and the matching funds provided by Ernest C. Becenti, Jr. for the proposed road widening project in Chinle, Navajo Nation (Arizona) as described in Exhibit "A" to this resolution which is incorporated into this clause of the resolution in its entirety.

3. The Economic Development Committee of the Navajo Nation Council recommends that the Intergovernmental Relations Committee of the Navajo Nation Council accept the Economic Strength Project Funds and the matching funds provided by Ernest C. Becenti, Jr. for the proposed road widening project in Chinle, Navajo Nation (Arizona) as described in Exhibit "A" to this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Economic Development Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor, 0 opposed and 0 abstained, this 17th day of May 2000.



David L. John, Chairperson
Economic Development Committee

Motion: Tom LaPahe
Second: Ralph Bennett

RESOLUTION OF THE
TRANSPORTATION AND COMMUNITY DEVELOPMENT COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving Acceptance of an Economic Strength Project Grant from the Arizona Department of Transportation for Road Improvements in Chinle, Navajo Nation (AZ) and Recommending that the Intergovernmental Relations Committee of the Navajo Nation Council that the Committee Waive Indirect Costs on this Economic Strength Project Grant

WHEREAS:

1. Pursuant to 2 N.N.C. Section 420, the Transportation and Community Development Committee is established and continued as a standing committee of the Navajo Nation Council; and
2. Pursuant to 2 N.N.C. Sections 421(E) and 423(E)(1), the Transportation and Community Development Committee of the Navajo Nation Council is authorized to oversee all matters related to roads and transportation within the Navajo Nation; and
3. On or near November 22, 1999, the Arizona Department of Transportation, in conjunction with the Arizona Department of Commerce, provided award documents for an Economic Strength Project Grant in the amount of \$101,230.00 for widening Highway 191 and providing for highway turnouts at the junction of Highway 191 and Navajo Route 7 in Chinle, Navajo Nation (AZ), to provide better access to the business site of Ernest C. Becenti, Jr.; and
4. The Economic Strength Project Grant requires matching funds in the amount of \$79,659.00, with these matching funds to be provided by Ernest C. Becenti, Jr., who will benefit from the road improvements at his business site in Chinle, Navajo Nation (AZ); and
5. The entire road improvement project, in the amount of \$180,869.00 will be performed at no cost to the Navajo Nation; and
6. The contracting and subcontracting, and all management activities related to this project will be carried out by Ernest C. Becenti, Jr.; and
7. The Transportation and Community Development Committee of the Navajo Nation Council finds that acceptance of this Economic Strength Project Grant and the matching funds is in the best interests of the Navajo Nation.

EXHIBIT B

NOW THEREFORE BE IT RESOLVED THAT:

1. The Transportation and Community Development Committee of the Navajo Nation Council finds that acceptance of the Economic Strength Project Grant and the matching funds provided by Ernest C. Becenti, Jr., is in the best interests of the Navajo Nation.

2. The Transportation and Community Development Committee of the Navajo Nation Council approves the acceptance of the Economic Strength Project Funds and the matching funds provided by Ernest C. Becenti, Jr., for the proposed road widening project in Chinle, Navajo Nation (AZ), as described in Exhibit "A" to this resolution, which is incorporated into this clause of the resolution in its entirety.

3. The Transportation and Community Development Committee of the Navajo Nation Council recommends that the Intergovernmental Relations Committee of the Navajo Nation Council accept the Economic Strength Project Funds and the matching funds provided by Ernest C. Becenti, Jr., for the proposed road widening project in Chinle, Navajo Nation (AZ), as described in Exhibit "A" to this resolution, and that the Intergovernmental Relations Committee of the Navajo Nation Council waive indirect costs on this project pursuant to 2 N.N.C. Section 824(9)(B) as the project will be carried out at no cost to the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Transportation and Community Development Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present, and the same was passed by a vote of 5 in favor, 0 opposed, and 0 abstained, this 16th day of May, 2000.



Lawrence T. Morgan
Chairperson
Transportation and Community
Development Committee of the
Navajo Nation Council

Motion: Joe Salt
Second: Sampson Begay



RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL

Acceptance of an Economic Strength Project Grant From the
Arizona Department of Transportation For Road Improvements
in Chinle, Navajo Nation (AZ), and Waiving Indirect Costs
On This Economic Strength Project Grant

WHEREAS:

1. Pursuant to 2 N.N.C. §821, the Intergovernmental Relations Committee is established as a standing committee of the Navajo Nation Council; and

2. Pursuant to 2 N.N.C. §§822(A) and 824(6), the Intergovernmental Relations Committee is authorized to review, approve and accept grants between a state and the Navajo Nation upon the recommendation of the program which has applied for the agreement; and

3. On or near November 22, 1999, the Arizona Department of Transportation, in conjunction with the Arizona Department of Commerce, provided award documents for an Economic Strength Project Grant in the amount of \$101,230.00 for widening Highway 191 and providing for highway turnouts at the juncture of Highway 191 and Navajo Route 7 in Chinle, Navajo Nation (AZ), to provide better access to the business site of Ernest C. Becenti, Jr.; and

4. The Economic Strength Project Grant requires matching funds in the amount of \$47,659.00, with these matching funds to be provided by Ernest C. Becenti, Jr., who will benefit from the road improvements at his business site in Chinle, Navajo Nation (AZ); and

5. The entire road improvement project, in the amount of \$180,869.00, will be performed at no cost to the Navajo Nation; and

6. The contracting and subcontracting, and all management activities related to this project will be carried out by Ernest C. Becenti, Jr.; and

7. The Intergovernmental Relations Committee of the Navajo Nation Council finds that acceptance of this Economic Strength Grant and the matching funds is in the best interests of the Navajo Nation.

EXHIBIT C

NOW THEREFORE BE IT RESOLVED THAT:

1. The Intergovernmental Relations Committee of the Navajo Nation Council finds that acceptance of the Economic Strength Project Grant and the matching funds provided by Ernest C. Becenti, Jr., is in the best interests of the Navajo Nation.

2. The Intergovernmental Relations Committee of the Navajo Nation Council approves the acceptance of the Economic Strength Funds and the matching funds provided by Ernest C. Becenti, Jr., for the proposed road widening project in Chinle, Navajo Nation (AZ), as described in Exhibit "A" to this resolution, which is incorporated into this clause of the resolution in its entirety.

3. The Intergovernmental Relations Committee of the Navajo Nation Council waives indirect costs on this project, pursuant to 2 N.N.C. §824(B)(9), as the project will be carried out at no cost and no expense to the Navajo Nation.

4. The Intergovernmental Relations Committee of the Navajo Nation Council authorized the President to sign all such papers and to perform all such acts, as are necessary and proper to carry out the intent of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor, 0 opposed and 0 abstained, this 17th day of May, 2000.



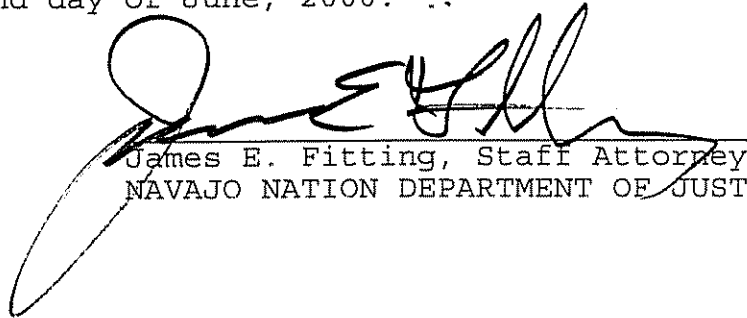
Ervin M. Keeswood, Chairperson Pro Tempore
Intergovernmental Relations Committee

Motion: Andy Ayze
Second: Kenneth L. Begay

APPROVAL OF THE NAVAJO NATION TRIBAL ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the NAVAJO NATION and declare this agreement to be in proper form and within the powers and authority granted to the Tribe under the laws of the Tribe.

DATED this 22nd day of June, 2000. ..



James E. Fitting, Staff Attorney
NAVAJO NATION DEPARTMENT OF JUSTICE



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

JANET NAPOLITANO
ATTORNEY GENERAL

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FACSIMILE: (602) 542-4085

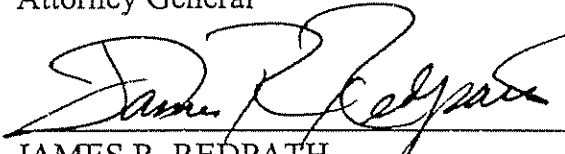
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR99-1652TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED July 20, 2000.

JANET NAPOLITANO
Attorney General



JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/637537

Enc.